

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 13

RYDER STUDENT TRANSPORTATION SERVICES, DIVISION OF RYDER PUBLIC TRANSPORTATION SERVICES<sup>1</sup>

Employer

and

TEAMSTERS LOCAL UNION NO. 142, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, AFL-CIO

Petitioner

Case 13-RC-20102

**DECISION AND DIRECTION OF ELECTION**

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board; hereinafter referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record<sup>2</sup> in this proceeding, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.<sup>3</sup>

3. The labor organization(s) involved claim(s) to represent certain employees of the Employer.<sup>4</sup>

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:<sup>5</sup>

All full time and regular part time bus drivers, including stand-by drivers and non-supervisory shift coordinators, working for Ryder Student Transportation Services, Division of Ryder Public Transportation Services at LTV Steel in East Chicago, Indiana excluding all office clericals, guards and supervisors as defined in the National Labor Relations Act.

**DIRECTION OF ELECTION\***

An election by secret ballot shall be conducted by the undersigned among the employees in the unit(s) found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit(s) who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who

have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by Teamsters Local Union No. 142, International Brotherhood of Teamsters, AFL-CIO

#### LIST OF VOTERS

In order to insure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of the full names of voters and their addresses which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *N.L.R.B. v. Wyman-Gordon Company*, 394 U.S. 759 (1969); *North Macon Health Care Facility*, 315 NLRB 359, fn. 17 (1994). Accordingly, it is hereby directed that within 7 days of the date of this Decision 2 copies of an election eligibility list, containing the full names and addresses of all of the eligible voters, shall be filed by the Employer with the undersigned Regional Director who shall make the list available to all parties to the election. In order to be timely filed, such list must be received in **Suite 800, 200 West Adams Street, Chicago, Illinois 60606** on or before **May 12, 1999**. No extension of time to file this list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

#### RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the **Executive Secretary, Franklin Court Building, 1099-14th Street, N.W., Washington, D.C. 20570**. This request must be received by the Board in Washington by **May 19, 1999**.

**DATED** this 5<sup>th</sup> day of May, 1999 at Chicago, Illinois.

/s/Elizabeth Kinney

Regional Director, Region 13

\*/ The National Labor Relations Board provides the following rule with respect to the posting of election notices:

(a) Employers shall post copies of the Board's official Notice of Election in conspicuous places at least 3 full working days prior to 12:01 a.m. of the day of the election. In elections involving mail ballots, the election shall be deemed to have commenced the day the ballots are deposited by the Regional Director in the mail. In all cases, the notices shall remain posted until the end of the election.

(b) The term "working day" shall mean an entire 24-hour period excluding Saturdays, Sundays, and holidays.

(c) A party shall be estopped from objection to nonposting of notices if it is responsible for the nonposting. An employer shall be conclusively deemed to have received copies of the election notice for posting unless it notifies the Regional Director at least 5 working days prior to the commencement of the election that it has not received copies of the election notice.

1/ The name of the Employer appears as amended at the hearing based upon the Employer's admissions on the commerce questionnaire signed and returned by the Employer to the Region and which was placed into evidence in the record.

2/ The Employer, although served with a Notice of Hearing and copy of the Petition, did not appear at the hearing. In addition, the record indicates that the Employer was telephonically notified about the hearing by the Hearing Officer prior to the scheduled hearing. The arguments advanced by the Petitioner at the hearing have been carefully considered.

3/ The commerce questionnaire submitted by the the Employer admits that is a corporation with nationwide facilities from which it is engaged in the business of providing transportation services to various companies including the services it provides herein at LTV Steel. During the preceding year, the Employer derived gross revenues in excess of \$50,000 for the performance of providing transportation services directly outside the State of Indiana.

4/ The Petitioner is a labor organization within the meaning of Section 2(5) of the Act. In order to be a labor organization under Section 2(5) of the Act, two things are required: first, it must be an organization in which employees participate; and second, one of the purposes for which it exists must be to deal with employers concerning wages, hours and other terms and conditions of employment. *Alto Plastics Mfg. Corp.*, 136 NLRB 850, 851-852. The record shows that employees participate in the Petitioner and that the Petitioner exists for the purpose of dealing with employers, both in the public and private sector, concerning the terms and conditions of employment of employees. The Petitioner has over 300 collective bargaining agreements covering employees' wages and other terms and conditions of employment. Further, the Petitioner pursues grievances on behalf of employees.

5/ The Petitioner seeks to represent a unit of all full time, regular part time bus drivers, excluding office clericals, guards, and supervisors as defined in the Act. The Petitioner contends that the first shift coordinator, Robin Gilliland, should be excluded from the unit on the grounds that her duties make her a supervisor within the meaning of Section 2(11) of the Act. The Petitioner, however, takes the position that the remaining coordinators, who drive buses, have duties similar to leadmen without any supervisory indicia and, thus, should be included in the unit.

### **Facts**

The Employer provides busing services to various companies, including providing such services at LTV Steel pursuant to a contract with Steven A. Wilson, Asc., which in turn has a contract with LTV Steel. The Employer's drivers report to work at the LTV Steel premises at the beginning of their shift, and they bus LTV employees to various departments in the LTV plant. The Employer's buses at LTV Steel are used exclusively for this service. The only time a driver takes a bus outside of the LTV facility is to get it repaired. The Employer employs approximately 30 drivers, of which 18 to 20 are part-time drivers. There are approximately nine large yellow school buses and mini-buses at the Employer's operations at LTV Steel.

The Employer began operations at the LTV facilities in August of 1998 taking over the bus service operations and employees from Greatway Transportation. While the Employer had the Greatway employees fill out new application forms, it appears from the record that there was no interruption of the employees employment during the transition from Greatway Transportation to the Employer herein. In July, 1996, the Petitioner had been certified as the collective bargaining representative of a unit of all full time and permanent part-time bus drivers employed by Greatway Transportation at the LTV facilities in Case 13-RC-19382. The record indicates that no collective bargaining agreement was ever reached with Greatway Transportation for the unit in which the Petitioner was certified as the representative.

Drivers work on three different shifts; morning, afternoon, and night. They bus LTV employees seven days a week. Every shift, the Employer's buses are parked at the west end of LTV's facility. All the Employer's workers park their cars in the same parking lot owned by LTV. The drivers pass through the gate to see their shift coordinator, and the coordinator tells the employee what bus he or she will be driving. Before they drive their buses, drivers must "pre-trip" the bus or perform routine maintenance checks to make sure the bus is in working condition. Drivers mostly just drive LTV employees, but if they have to, they will perform maintenance on their bus. Maintenance consists of cleaning out the interior of the buses. The maintenance duty is usually reserved for a stand-by driver named Blanca Jiminez. As a stand-by driver, she replaces any drivers who do not show up for work. She serves as a stand-by driver until 8:00 am, then usually she drives the rest of her shift, just like other drivers. Drivers have set routes to deliver LTV employees to different parts of the plant.

*Drivers:* The drivers for the Employer all have a number of things in common. There is a handbook given to all drivers which contains Ryder's rules and policies which are different than those for LTV employees, although the drivers do have to abide by LTV's safety guidelines. All the drivers must pass a drug test and obtain a commercial drivers license in order to be employed. The Employer trained them how to drive the various routes. The Employer provides employees with health insurance, life insurance, a 401(k) plan, and a profit sharing plan for those who desire one. All the drivers wear a shirt with the Ryder emblem on it. The Employer pays all the employees, including the shift coordinators, on an hourly basis, and the pay does not vary between shifts. The employees do not have any formal vacation or sick leave time. If an employee wants time off for vacation or sickness, they all must first clear it through Robin Gilliland, the head coordinator. They also have no break or lunch time. The driver's shifts are approximately four hours long. All full-time drivers work around 10 shifts a week with roughly the same hours. The part-time drivers also work on a regular schedule. The Employer assigns drivers permanently to a shift. If that driver wishes to be on another shift, they must clear it with their supervisor. Drivers talk among themselves throughout the day either before or after a shift or on the radio and use the same restrooms.

*Coordinators:* The Employer's three work shifts have one coordinator for each shift. The other coordinators besides Robin Gilliland are Patricia Rodriguez for the afternoon and Hanna Reese for the night shift. Coordinators check in drivers at the beginning of shifts, noting arrival times. If a driver does not show up, a coordinator finds a substitute,

usually the stand-by driver. If a driver calls off work, the coordinators try to find a substitute. They also instruct the drivers as to which bus they will be driving for that shift. The Employer pays the coordinators hourly but they get nine hours pay for eight hours of work. Coordinators can offer additional shifts to drivers if they want them and send drivers home early if not needed. The record does not indicate whether coordinators, other than Gilliland, can require employees to work extra shifts. Coordinators, including Robin Gilliland, also drive buses, but they do so on special routes and only for important LTV employees. On occasions when coordinators have been sick, drivers have substituted for them once it was cleared with Robin Gilliland. According to testimony on the record, if a dispute occurred between an LTV employee and a driver, a coordinator would investigate the dispute, perhaps give some advice to the driver, and give a report on what happened to Robin Gilliland. The coordinator might also report the driver's version of the incident to head of transportation for LTV.

*The Head Coordinator:* The first shift coordinator, Robin Gilliland, also has the title of head coordinator. She oversees all three shifts to make sure workers are not tardy or absent. Ms. Gilliland herself answers to Bruce Barr and Karen Azman, whose titles are unclear from the record, and who are not stationed at the LTV facilities. Her position entails additional duties that the other coordinators do not have. Ms. Gilliland schedules the employees for work, and she hangs this schedule on the bus that she drives. The employees consider Ms. Gilliland's bus to be Ryder's field office. Generally, either Ms. Gilliland or Karen Azman handles any disciplinary problems which might arise. When an employee wants time off, that employee must ask Ms. Gilliland. Ms. Gilliland also assigns substitutes for coordinators when they are sick or on leave. Gilliland has payroll duties and works with clericals in the office. The record shows that Gilliland has the power to effectively recommend suspension and termination of employees. She has verbally disciplined a number of employees in the past, and she recommended to Karen Azman the demotion of coordinator Lynn Toliver to the position of driver. Toliver was subsequently demoted based upon the recommendation of Gilliland, despite Toliver's protestations to Karen Azman.

## **Analysis**

Under Section 9(b) of the Act, the Board has the power to "decide in each case whether, in order to assure employees the fullest freedom in exercising the rights guaranteed by this Act, the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit, or subdivision thereof. . . ." "The selection of an appropriate bargaining unit lies largely within the discretion of the Board whose decision, if not final, is rarely to be disturbed." *South Prairie Construction v. Operating Engineers Local 627*, 425 U.S. 800, 805 (1976). The National Labor Relations Act allows a union to petition for an appropriate unit. *Brand Precision Services*, 313 NLRB 657 (1994); *Phoenix Resort Corp.*, 308 NLRB 826, 828 (1992). However, this does not necessarily mean that the unit will be the most appropriate or that there might not be others more appropriate. *Phoenix*, *supra* at 828.

The key question regarding unit appropriateness is whether the employees have a sufficient community of interest. In *Kalamazoo Paper Box Corp.*, 136 NLRB 134 (1962), the Board enumerated the factors to be considered in determining whether individuals have a community of interest with other employees. Included were: method of wages or compensation, hours of work, employment benefits, supervision, qualifications, training and skills, job functions, amount of contact with other employees, integration of work functions, and bargaining history: see also *Washington Palm, Inc.*, 314 NLRB 1122, 1127 (1994) and *Keeler Brass Co.*, 301 NLRB 769, 776 (1991). Based on these considerations, the unit sought by the Petitioner is an appropriate unit..

The unit sought consists of all the Employer's non-supervisory employees working at a single location, they all perform the same tasks and enjoy common terms and conditions of employment. The only employees, other than the coordinators discussed below, who have some duties which are different than the rest of the drivers are the stand-by drivers. However, their differences from other drivers are very small in comparison to the community of interest they share with the other drivers. Stand-by drivers replace any drivers who does not show up for work. If the stand-by drivers did not perform this service, the shift would be short a driver. Thus, their work is integral to the functioning of the rest of the unit. Once all the drivers have shown up, the stand-by drivers drive the rest of shifts the same as other drivers. All the drivers, including stand-bys, have the same supervision. Depending on what shift a driver is on, morning, afternoon, or night, those drivers report to that shift's coordinator. The drivers also have the same wage scale paid on an hourly basis, amount of contact with other drivers, training, qualifications, and bargaining history. Accordingly, I find that a unit of full and regular part-time drivers, including stand-by drivers, is an appropriate unit.

The Petitioner contends that the head shift coordinator, Ms. Gilliland, is a supervisor within the meaning of Section 2(11) of the Act but that the two shift coordinators are not supervisors within the meaning of the Act.

Section 2(11) of the Act defines the term "supervisor" as:

Any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly direct them, or to adjust their grievances, or effectively recommend such action, if in connection with the foregoing the exercise of such authority is not of merely routine or clerical nature, but requires the use of independent judgment.

The exercise of any one of these authorities is sufficient to confer supervisory status; such authority, however, must be exercised "with independent judgment on behalf of management and not in a routine or sporadic manner" (citation omitted); *International Center for Integrative Studies/The Door*, 297 NLRB 601 (1990). In each case, the differentiation must be made between the exercise of independent judgment and the routine following of instructions, between effective recommendation and forceful suggestion, and between the appearance of supervision and supervision in fact. See, e.g., *Chevron Shipping Co.*, 317 NLRB 379 (1995); *J.C. Brock Corp.*, 314 NLRB 157 (1994);

*Clark Machine Corp.*, 308 NLRB 555 (1992); *McCullough Environmental Services*, 306 NLRB 5645 (1992); and *Quandrex Environmental Co.*, 308 NLRB 101 (1992). Additionally, the Board has a duty not to construe supervisory status too broadly as such status deprives employees of their rights under Section 7 of the Act. See *Masterform Tool Co.*, 327 NLRB No. 185 (1999); *Adco Electric*, 307 NLRB 1113, 1120 (1992); *Chevron Shipping Co.*, 317 NLRB 379, 380-381 (1985).

The first shift coordinator, Robin Gilliland, is the highest ranking employee present at the LTV facilities, and she exercises supervisory authority on behalf of the Employer. Thus, the record discloses that Gilliland can and has verbally disciplined employees. The record also demonstrates that she has the authority to effectively recommend that disciplinary action be taken against employees beyond the verbal warnings she gives. Thus, the record shows that she effectively recommended the demotion of one of the shift coordinators to a driver position. Higher management effectuated Gilliland's demotion recommendation, despite the employees protest, stating to the protesting employee there was nothing higher management could do; see, *Chevron Shipping Co.*, *supra*. Gilliland schedules employees for work, and, if employees want time off, they have to clear it through Gilliland. Gilliland assigns substitutes for coordinators when they can not report for work. All the Ryder employees, drivers and coordinators included, answer and report to Ms. Gilliland at the LTV site. Accordingly, Ms. Gilliland's duties make her a supervisor within the meaning of Section 2(11) of the Act, and I shall, therefore, exclude her from the unit found appropriate.

Unlike Ms. Gilliland, the other shift coordinators perform no duties or exercise such independent judgment in performing their duties so as to confer upon them supervisory status within the meaning of Section 2(11) of the Act. These coordinators do oversee particular shifts, and employees come to them for directions such as which bus to drive and report any disputes they may have had with LTV employees. However, the record does not show that these shift coordinators do anything more than give advice to employees. The record does not show that coordinators have the authority to resolve the disputes themselves or direct the employees in the actions they are to take. Similarly, with regard to finding substitutes for absent drivers and for extra shifts, the record merely shows that the coordinators can offer the shifts to employees. The record does not show that the coordinators have the authority to require drivers to work the unfilled shifts. home early and to substitute drivers when needed. The record does not show under what circumstances the shift coordinators can send drivers home early and if they use any independent judgment in doing so. In most, if not all, situations, the record indicates that the shift coordinators report problems and issues that arise on their shifts to the head coordinator, Robin Gilliland. Based upon the entire record herein, I find that the other shift coordinators are not supervisors within the meaning of Section 2(11) of the Act and I shall include them in the unit found appropriate herein. among the full and regular part time drivers in this case. . Accordingly, I shall direct an election in the following unit:

All full time and regular part time bus drivers, including stand-by drivers and non-supervisory shift coordinators working for Ryder Student Transportation Services, Division of Ryder Public Transportation Services at LTV Steel in East Chicago, Indiana

excluding all office clericals, guards and supervisors as defined in the Act.

There are approximately 30 employees in the unit found appropriate herein.

420-0100; 177-8500; 177-8520



Ryder Student Transportation Services  
13-RC-20102

CHIPS Form 110  
revised 7/31/85

Routing: Bd. Agent (drafter)  
ARD (Reviewing sup.)  
ARD Secretary  
CHIPS  
ARD Secy. (DW file)

110 = REGIONAL DIRECTOR'S DECISION AND DIRECTION OF ELECTION  
(Includes 8(b)(7)(C) cases and Decision granting AC, UC, or UD)

Case Number 13-RC-20102

Employer's Name Ryder Student Transportation Services

Date of Decision

Was issuance of decision delayed by concurrent C case? ☐ Yes ☒ No

If yes, enter Case Number 13-

Hearing closed date April 21, 1999

Industry providing contract transportation services

Unit description code:

- ☐ A = overall industrial plus any other classification
- ☐ C = craft, one or more
- ☐ D = departmental, one or more
- ☐ G = guards
- ☐ W = office, clerical, sales & other white collar workers
- ☐ P = professional and/or technical employees
- ☐ R = combination of W & P
- ☐ T = Teamsters (only when petitioner is Teamsters)
- ☐ Z = residual

Special type of election?

- ☐ 1 = Sonotone    ☐ 2 = Globe    ☐ 3 = Sonotone & Globe    ☐ 4 = craft severance
- ☐ 5 = sever department    ☐ 6 = sever other    ☐ 7 = ZIA    ☐ 8 = other

Drafted by Hitterman

Reviewing Supervisor Eggertsen

Number of employees in unit 30

Date case assigned April 27, 1999

Date request for review due

Date last brief timely received April 28, 1999

REQUIRED ATTACHMENTS: None    entered in CHIPS computer by: \_\_\_\_\_  
(operator's initials)

